SUPREME COURT OF THE UNITED STATES.

No. 184.—October Term, 1924.

Ephraim Lederer, Collector of Internal Revenue for the First District of the State of Pennsylvania, Petitioner, *vs.* Fidelity Trust Company.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[January 26, 1925.]

Mr. Justice Holmes delivered the opinion of the Court.

This is a suit by the Fidelity Trust Company to recover $450 and interest paid by it under protest for internal revenue stamps which the Collector, Lederer, required it to attach to railroad equipment certificates drawn in a form set forth. The parties agree that the only question is whether these certificates are subject to a stamp tax under the Act of February 24, 1919, c. 18, Title XI, § 1100, and Schedule A (1); 40 Stat. 1057, 1133, 1135. The section imposes a tax according to the schedule and the material part of the schedule is as follows: "1. Bonds of indebtedness: On all bonds, debentures, or certificates of indebtedness issued by any person, and all instruments however termed, issued by any corporation with interest coupon or in registered form, known generally as corporate securities, on each $100 of face value or fraction thereof, 5 cents." The question more narrowly stated is whether the certificates are instruments issued &c. known generally as corporate securities. The Circuit Court of Appeals reversing the judgment of the District Court held that they were not within the schedule, that "no indebtedness is involved or obligation incurred by the trustee to the holder, but it is simply a certificate of the holder's right to proportionate participation in a rental when paid." 289 Fed. Rep. 1009, 1012. A writ of certiorari was granted by this Court.

Using a familiar device the Fidelity Trust Company agreed to furnish and let to the Interstate Railroad Company 500 speci-

fied cars and the lessee agreed to pay $90,000, being one-tenth of the cost of the cars, annually at certain dates, and three per cent. half yearly on the part then unpaid. When the whole amount should be paid the trustee agreed to sell the cars to the Railroad Company for one dollar. As part of the same transaction by an instrument reciting that subscriptions had been secured through certain bankers to a fund, to be known as Interstate Railroad Equipment Trust, Series 'C,' for the payment of the price of the railroad equipment described in the lease, and that the trustee proposed 'to secure to the parties subscribing' to the fund the payment thereof in ten annual instalments with interest at six per cent., the trustee covenanted with the railroad on receipt of the money subscribed to issue to the bankers the certificates in question here. The essential features are that the bearer or registered holder is entitled to one share of $1,000 in Interstate Railroad Equipment Trust, Series 'C,' in accordance with the above agreement, referred to; that the principal shall be payable at the dates of the payments by the railroad, one-tenth of the certificates, identified by number, each year, and in the meantime dividends will be payable as evidenced by dividend warrants attached, principal and interest payable in gold &c., "but only from and out of the deferred rentals as provided in" the lease referred to.

The petitioner asks us to look through the form of the arrangement and give it a somewhat different meaning. The respondent on the other hand says in the language of *United States* v. *Isham*, 17 Wall. 496, 'whatever upon its face (the instrument) purports to be, that it is for the purpose of ascertaining the stamp duty.' We are content to adopt the respondent's rule for this case, as upon any rule the result seems to us clear.

As a matter of common speech, to which the statute refers, we have no doubt that these instruments would be known as corporate securities. They would be called so more accurately than some other documents which we believe also would be known generally by that name. Their purpose, as stated in the agreement of the trustee with the railroad, is to secure payment to the holder with interest. They do nothing else. We do not regard the precise limits of the Trust Company's undertaking as important. If it were only to collect and pay money received by the Company under the secured contract of the Railroad it would be a security

for money payment. But the counsel for the Company seemed not prepared to argue that the Company could not put the money received from the Railroad into its general account without a breach of trust, and give the certificate holder cash or a check for his interest or principal. But be the undertaking greater or less, the security better or worse, we cannot regard these certificates as anything but corporate securities by general understanding and in fact.

Judgment reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.